Form 31

Procedures Memorandum—Removal of 144 Restrictive Legends

[Company] (the “Company”)

\_\_% [Senior] Notes, due 20\_

PROCEDURES MEMORANDUM REMOVAL OF 144 RESTRICTIVE LEGENDS

All defined terms used herein have the same meaning as given to them in the [Indenture/Closing Memorandum].

These procedures outline the actions and document deliveries needed for the removal of the restrictive legends from the Notes, on the first Business Day [six][twelve] months following the Closing Date (the “Restriction Expiration Date”), for holders of the Notes [who are not Affiliates of the Company]. All documents, including opinions, Officer’s Certificates, and the form of an Unrestricted Global Note, should be agreed upon prior to closing.

Note: The Depository Trust Company, as custodian for the Notes (“DTC”), requires the Trustee to deliver (i) a Notice to Holders of the Notes (“Exhibit C” hereto) and (ii) an executed Mandatory Exchange 144A Letter from the Company (“Exhibit D” hereto) no later than 15 days prior to the Restriction Expiration Date. To ensure the timely removal of 144A restrictions from any security, the process outlined in this memorandum should begin three weeks prior to the Restriction Expiration Date so that all documentation can be finalized.

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| --- | --- | --- |
| CONTACT INFORMATION FOR RESPONSIBLE PARTIES | | |
| For the Company: | [Company]  [Contact Name]  Tel: [ ]  [Email] | [Company Counsel]  [Contact Name]  Tel: [ ]  [Email] |
| For the Initial Purchaser: | [Initial Purchaser]  [Contact Name]  Tel: [ ]  [Email] | [Initial Purchaser’s Counsel]  [Contact Name]  Tel: [ ]  [Email] |
| For the Trustee: | [Trustee]  [Contact Name]  Tel: [ ]  [Email] | [Trustee’s Counsel]  [Contact Name]  Tel: [ ]  [Email] |

|  |  |  |
| --- | --- | --- |
| Timing | Action | Documents |
| 3 weeks prior to the Restriction Expiration Date: | Initial Purchaser/Initial Purchaser’s Counsel sends the Company and Company Counsel the Initial Purchaser’s Request Letter for the removal of the restrictive legends. Trustee and Trustee’s Counsel should be copied on all correspondence. | Exhibit A—Initial Purchaser’s Request Letter |
| 15 days prior to the Restriction Expiration Date: | The Company delivers to the Trustee (i) a Notice to the Trustee regarding the removal of the restrictive legends, (ii) a Notice to the Holders to be posted through the facilities at DTC, and (iii) a Mandatory Exchange 144A Letter addressed to DTC. | Exhibit B—Notice to Trustee  Exhibit C—Notice to Holders  Exhibit D—DTC Mandatory Exchange 144A Letter |
| The Trustee submits to DTC the Notice to Holders and the Mandatory Exchange 144A Letter to the Underwriting Department at DTC. |
| DTC posts the Notice to Holders. |
| Deliveries on the Restriction Expiration Date: | The Company will deliver to the Trustee an Authentication Order and the original executed Unrestricted Global Note. | Exhibit E—Authentication Order |
| The Trustee will deliver a countersigned copy of the Unrestricted Global Note and countersigned Authentication Order acknowledging receipt. |
| Company Counsel delivers to the Trustee (i) an Exchange Opinion Letter, and (ii) related Officer’s Certificate to the Trustee dated as of the Restriction Expiration Date. | Exhibit F—Opinion to Trustee  Exhibit G—Officer’s Certificate |
| Company Counsel delivers to the Trustee a (i) bring-down opinion letter, and (ii) Officer’s Certificate dated as of the Restriction Expiration Date, in the forms delivered on the Closing Date pursuant to the Indenture. |  |

EXHIBIT A

Initial Purchaser’s Request Letter

This document is for reference purposes only, and should be negotiated and agreed upon by the relevant participants prior to the Closing Date.

[Company]

[Address]

|  |  |  |
| --- | --- | --- |
| Re: | [Company] (the “Company”) $[Aggregate] Aggregate Principal Amount of \_\_% [Senior] Notes Due 20\_ (the “Original Notes”) |  |

Ladies and Gentlemen:

The undersigned Initial Purchaser hereby requests that the current global notes on file with [Trustee] (the “Trustee”), in aggregate principal amount of $[Aggregate], representing the above referenced Original Notes, shall be replaced with a global note representing $[Aggregate] of \_\_% [Senior] Notes Due 20\_ of the Company, free of restrictive legends and with an unrestricted CUSIP (the “Replacement Notes”), no later than [Month] \_\_, 20\_ (the “Restriction Expiration Date”) pursuant to Rule 144 promulgated pursuant to the U.S. Securities Act of 1933, as amended. In order to induce the Company to render an order of instruction to the Trustee to replace the Original Notes and register the Replacement Notes with the Depository Trust Company, as custodian, on the Restriction Expiration Date the undersigned hereby represents and warrants to and agrees with you and the Company as follows:

1. The Notes were acquired by the undersigned from the Company in a transaction not involving a public offering.

2. The undersigned is not an “affiliate” of the Company as of the date hereof, and was not an “affiliate” as of the Closing Date, or at any time during the three months preceding the Closing Date. For this purpose “affiliate,” as defined in Rule 144(a)(1), is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the Company. Without limiting the generality of the foregoing, during the preceding three months neither the undersigned nor any of the current holders has been a director or an officer of the Company or has had any other material relationship or transaction with the Company.

3. The undersigned has no knowledge of any material information regarding the current or prospective operations of the Company that has not been publicly disclosed.

4. The undersigned understands that you and the Company are relying upon the representations contained in this letter. The undersigned hereby indemnifies and holds you and the Company harmless from and against any claim against you or the Company and against any other loss, cost, damage or expense to you or the Company as a result of or which involves the inaccuracy of any representation or the breach of any warranty made by the undersigned in this letter, including, without limitation, all expenses, reasonable attorney’s fees, and court costs incurred as a result of any such inaccuracy or any representation or breach of warranty.

Very truly yours,

[Initial Purchaser]

EXHIBIT B

Notice to Trustee

[Company]\_\_\_\_% [Senior] Notes due 20\_ \_\_\_\_\_\_\_

NOTICE AND INSTRUCTION LETTER

[Month] \_\_, 20\_

[Trustee], as Trustee

[Address]

Attention: [Contact/Trust Services]

|  |  |  |  |
| --- | --- | --- | --- |
|  | Re: | [Company] (the “Company”) \_\_\_% [Senior] Notes due 20\_ (the “Notes”) |  |

Ladies and Gentlemen:

The undersigned officer of [Company] hereby provides notice pursuant to Section \_\_.\_\_ of the Indenture (the “Indenture”), dated as of [Month] \_\_, 20\_, by and between the Company and [Trustee], as trustee, that the restricted global notes (the “Restricted Global Notes”), with CUSIP number \_\_\_\_\_\_\_\_\_\_\_\_ (the “144A CUSIP”), shall be exchanged for an unrestricted global note (the “Unrestricted Global Note”), with CUSIP number \_\_\_\_\_\_\_\_\_\_\_, on [Month] \_, 20\_. The exchange shall be made pursuant to Section(s) \_\_.\_\_ of the Indenture.

Upon receipt of a Company Order pursuant to Section \_\_.\_\_ of the Indenture and an Officer’s Certificate pursuant to Section \_\_.\_\_ of the Indenture, you are hereby instructed to (i) direct the Security Registrar (as defined in the Indenture) to exchange all of the outstanding beneficial interests in the Restricted Global Note to the Unrestricted Global Note, and (ii) cancel the Restricted Global Notes.

In addition, you are instructed to provide the enclosed Exchange Notice to the Holders of the Notes no later than [Month] \_\_, 20\_ [MUST BE AT LEAST 15 DAYS PRIOR TO THE EXCHANGE DATE] at such holders’ respective addresses appearing in the register of holders or through the facilities of The Depository Trust Company.

IN WITNESS WHEREOF, the undersigned has signed this Notice and Instruction Letter as of the date first written above, on behalf of the Company.

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| --- | --- | --- |
|  | [COMPANY] | |
|  | By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | |
|  |  | Name:  Title: |

EXHIBIT C

Notice to Holders

NOTICE TO HOLDERS OF

Any and All Outstanding \_\_\_\_% [Senior] Notes due 20\_\_\_\_of [Company] with CUSIP number \_\_\_\_\_\_\_\_\_\_\_\_

[Company] (the “Company”) is hereby delivering this notice to all holders of its \_\_\_% [Senior] Notes due 20\_ with CUSIP number \_\_\_\_\_\_\_\_\_\_\_\_\_(the “Restricted Global Notes”). Your Restricted Global Notes bear a restricted security legend and have a restricted CUSIP number.

This notice is to inform you that on [Month] \_\_, 20\_, your Restricted Global Notes will be exchanged for unrestricted global notes (the “Unrestricted Global Notes”) pursuant to Section \_\_.\_\_ of the Indenture, dated as of [Month] \_\_, 20\_, by and between the Company and [Trustee], as trustee. Following this exchange, the Unrestricted Global Notes will not bear a restricted security legend and will have an unrestricted CUSIP number, which will be \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. There is no need to deliver your notes to any person for exchange and you will not be required to take any action to receive Unrestricted Global Notes with the unrestricted CUSIP number.

If you have any questions, please contact [Trustee Contact/Bond Services Dept] at [Telephone #].

Dated: [Month] \_\_, 20\_

EXHIBIT D

DTC Mandatory Exchange 144A Letter

[COMPANY LETTERHEAD]

[Month] \_\_, 20\_

The Depository Trust Company

55 Water Street, 1SL

New York, NY 10041-0099

Attention: Underwriting Department

RE: REQUEST FOR MANDATORY EXCHANGE OF SECURITIES AND NOTICE OF THE END OF THE RESTRICTED PERIOD OF SECURITIES ELIGIBLE AT DTC ISSUED PURSUANT TO RULE 144A NOW ELIGIBLE FOR RESALE PURSUANT TO RULE 144(b)(1) AND REQUEST TO MAKE AN UNRESTRICTED SECURITY ELIGIBLE AT DTC.

Issuer Name:

Restricted Security:

Effective Date:

Exchange Date (if it differs from Effective Date):

Exchange Rate:

Transfer Agent Contact Name: [Trustee], as Trustee

Transfer Agent Contact Telephone Number:

Ladies and Gentlemen:

Reference is made to the Blanket Issuer Letter of Representations addressed to DTC dated [Month] \_\_, 20\_ (the “BLOR”) from [Company] (the “Issuer”) in connection with the above-referenced issue of restricted securities (the “Restricted Securities”). It is understood that the BLOR is subject to DTC’s procedures as stated in DTC’s current Operational Arrangements, which may be downloaded from DTC’s website [www.dtcc.com](http://www.dtcc.com) (select “Legal & Regulatory,” then “Issuer Eligibility”).

Issuer hereby notifies you that on [Month] \_\_, 20\_ (the “Effective Date”), the Restricted Securities will become freely tradable without restrictions by non-affiliates of the Issuer pursuant to Rule 144(b)(1) promulgated under the U.S. Securities Act of 1933, as amended. Please be advised that the freely tradable securities will be represented by the CUSIP number \_\_\_\_\_\_\_\_\_\_\_\_\_ (”Unrestricted Securities”) and by a global security without restrictive legends. Issuer represents that no “affiliate” of the Issuer as defined in Rule 144(a)(1) is a holder of the Restricted Securities. Issuer hereby requests that DTC make the Unrestricted Securities represented by the unrestricted CUSIP number [Unrestricted CUSIP Number] eligible at DTC on the Effective Date. Issuer hereby instructs DTC to exchange all Restricted Securities represented by CUSIP number \_\_\_\_\_\_\_\_\_\_\_\_\_\_ for Unrestricted Securities represented by the unrestricted CUSIP number \_\_\_\_\_\_\_\_\_\_\_\_\_\_. Issuer acknowledges that such exchange of Restricted Securities for Unrestricted Securities will be made in accordance with DTC’s Procedures concerning mandatory exchanges.

Issuer confirms and agrees that the BLOR shall apply in full force and effect with respect to the Unrestricted Securities as of the Effective Date. In addition, Issuer acknowledges that the terms of the Unrestricted Securities are the same as the Restricted Securities, other than with respect to any restrictive legends on the Restricted Securities.

|  |  |  |
| --- | --- | --- |
|  | Very truly yours, | |
|  | [COMPANY] | |
|  | By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | |
|  |  | Name:  Title: |

Attachment: Form of Unrestricted Security

cc: DTC Announcements

EXHIBIT E

Authentication Order

[COMPANY LETTERHEAD]

Date: [Month] \_\_, 20\_

Order for the Authentication and Delivery of Unrestricted $[Aggregate] Aggregate Principal Amount of \_\_\_% [Senior]Notes due 20\_

[Trustee], as Trustee

[Address]

Attention: [Contact/Trust Services]

Ladies and Gentlemen:

In connection with the original issuance and delivery on [Month] \_\_, 20\_, of $[Aggregate] aggregate principal amount of \_\_% [Senior] Notes due 201\_ (the “Notes”) and pursuant to Section \_\_.\_\_ of the Indenture governing the Notes, dated as of [Month] \_\_, 20\_ (the “Indenture”), by and between [Company], as issuer (the “Issuer”) and you, as Trustee (the “Trustee”) (capitalized terms shall have the respective meaning set forth in the Indenture), the Issuer hereby requests and authorizes you, as Trustee, to:

(a) authenticate and make available for delivery the Unrestricted Global Note, CUSIP Number \_\_\_\_\_\_\_\_\_\_ in exchange for the Restricted Global Notes referred to in (c) below, such Unrestricted Global Note having been heretofore duly executed by an authorized officer of the Issuer, registered in the name of Cede & Co., as nominee for The Depository Trust Company (“DTC”), and dated [Month] \_\_, 20\_, in the aggregate principal amount of $[Aggregate];

(b) hold the Unrestricted Global Note as custodian for DTC; and

(c) cancel the Restricted Global Notes: 144A CUSIP Number \_\_\_\_\_\_\_\_\_\_\_ registered in the name of Cede & Co., as nominee for DTC, dated [Month] \_\_, 20\_, in the aggregated principal amount of $[Aggregate].

The following documents accompany and supplement this order:

(a) an opinion of counsel prepared in accordance with Section \_\_.\_\_ of the Indenture;

(b) an Officer’s Certificate of the Issuer in accordance with Section \_\_.\_\_ of the Indenture; and

(c) the Unrestricted Global Note, executed in genuine or facsimile signature by an authorized officer of the Issuer.

|  |  |  |
| --- | --- | --- |
|  | Very truly yours, | |
|  | [COMPANY NAME] | |
|  | By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | |
|  |  | Name:  Title:  Date: |

The undersigned, as Trustee under the Indenture referred to above, acknowledges (i) receipt of the Unrestricted Global Notes, and (ii) compliance with all actions requested in the foregoing letter.

|  |  |  |
| --- | --- | --- |
|  | [TRUSTEE], as Trustee | |
|  | By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | |
|  |  | Name:  Title:  Date: |

EXHIBIT F

Opinion to Trustee

This document is for reference purposes only, and should be negotiated and agreed upon by the relevant participants prior to the Closing Date.

[Month] \_\_, 20\_

[Trustee]

[Address]

Attention: [Contact/Trust Services]

Dear Ladies and Gentlemen:

We have acted as counsel to [Company], a [State of Incorporation] corporation (the “Company”), in connection with the Indenture dated [Month] \_\_, 20\_ (the “Indenture”), between the Company and you, as Trustee, relating to the removal of the restrictive legends from the Company’s Restricted Global Notes representing $[Aggregate] aggregate principal amount of \_\_% [Senior] Notes due 20\_ (the “Original Notes”), and the replacement thereof by the issuance of the Company’s Unrestricted Global Notes in the aggregate principal amount of $[Aggregate] of \_\_% [Senior] Notes due 20\_ without such restrictive legends (the “Replacement Notes”) pursuant to the U.S. Securities Act of 1933, as amended.

This opinion letter is furnished to you at the Company’s request pursuant to Section \_\_.\_\_ of the Indenture. Capitalized terms that are defined in the Indenture and are used but not defined herein have the meanings given them in the Indenture.

Pursuant to Section \_\_.\_\_ of the Indenture, we have:

(a) Read Section \_\_.\_\_ of the Indenture and the applicable provisions of the Original Notes and the definitions therein relating thereto.

(b) Examined original counterparts or copies of the Indenture and the Original Notes and originals or copies of such records of the Company, certificates of public officials and other documents as we have deemed necessary as a basis for the opinions expressed below.

(c) In our opinion, made such examination and investigation as are necessary to enable us to express an informed opinion as to whether or not Section \_\_.\_\_ of the Original Notes has been complied with in connection with the removal of the restrictive legends on the Original Notes, and the execution and delivery of the Original Notes by the Company and the authentication thereof by the Trustee have been complied with.

In rendering the opinions expressed below, we have assumed:

(i) The genuineness of all signatures.

(ii) The authenticity of the originals of the documents submitted to us.

(iii) The conformity to authentic originals of any documents submitted to us as copies.

(iv) As to matters of fact, the truthfulness of the representations made in the Indenture and representations and statements made in the Officer’s Certificate in respect of the execution of the Indenture and certificates of public officials.

(v) The due authorization, execution and delivery by the parties thereto (excluding the Company and its Subsidiaries) of all documents and instruments examined by us.

(iv) The legal capacity of natural persons.

(vii) That, to the extent such documents and instruments purport to constitute agreements between the Company and other parties, they constitute valid, binding and enforceable obligations of the other parties.

We have not independently established the validity of the foregoing assumptions.

Based upon the foregoing, and subject to the qualifications and limitations herein, we are of the opinion that all conditions precedent to the removal of the restrictive legends on the Original Notes and the execution and delivery of the Replacement Notes and the authentication thereof by the Trustee have been complied with.

This opinion letter is limited to the matters expressly stated herein and is provided solely for your benefit pursuant to Section \_\_.\_\_ of the Indenture and for purposes of complying with the requirements of the Indenture, and no opinions may be inferred or implied beyond the matters expressly stated herein. This opinion letter may not be relied upon by you for any other purpose or by any other person without our prior written consent, except that it may be relied on by the officer of the Company executing the Officer’s Certificate relating to the Indenture in connection with such certificate. Except for the use permitted herein, this opinion may not be quoted, circulated or published, in whole or in part, or otherwise referred to, filed with or furnished to any other person or entity, without our express prior written authorization. The opinions expressed herein are rendered and speak only as of the date hereof, and we specifically disclaim any responsibility to update such opinions subsequent to the date hereof or to advise you of subsequent developments affecting such opinions.

Very truly yours,

[Company Counsel]

EXHIBIT G

Officer’s Certificate

This document is for reference purposes only, and should be negotiated and agreed upon by the relevant participants prior to the Closing Date.

OFFICER’S CERTIFICATE

The undersigned, [Name], [Title] of [Company], a [State of Incorporate] corporation (the “Company”), delivers this certificate pursuant to Section \_\_.\_\_ of the Indenture, dated [Month] \_\_, 20\_, between the Company and [Trustee] (the “Indenture”), relating to the removal of the restrictive legends from the global notes representing $[Aggregate], aggregate principal amount of \_\_\_% [Senior] Notes due 20\_ (the “Original Notes”), and the replacement thereof by the issuance of the Company’s global note in the aggregate principal amount of $[Aggregate] of \_\_\_% [Senior] Notes due 20\_ without such restrictive legends (the “Replacement Notes”) pursuant to the U.S. Securities Act of 1933, as amended, and certifies that capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Indenture and that:

(a) I have read the covenants or conditions provided for in the Indenture with respect to the removal of the restrictive legends on the Original Notes pursuant to the terms of the Original Notes and Section \_\_.\_\_ of the Indenture, and execution, delivery and authentication of the Replacement Notes pursuant to Section\_\_.\_\_ of the Indenture;

(b) in connection with furnishing this Officer’s Certificate, I have examined the records of the Company and such other records and documents as I have deemed necessary or appropriate as a basis for the opinion expressed below in paragraph (d);

(c) in my opinion, I have made such examination or investigation as is necessary to enable me to express an informed opinion as to whether the covenants or conditions provided for in the Indenture and the Original Notes with respect to removal of the restrictive legends on the Original Notes and the execution, delivery, and authentication of the Replacement Notes have been complied with; and

(d) in my opinion, such covenants or conditions have been complied with.

IN WITNESS WHEREOF, the undersigned has executed this certificate as of [Month] \_\_, 20\_.

|  |  |  |
| --- | --- | --- |
|  | By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | |
|  |  | Name:  Title: |